

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

---

Kelsey Smith,

*On behalf of herself and those  
similarly situated,*

Plaintiff,

v.

Local Cantina, LLC, *et al.*,

Defendants.

Case No. 2:20-cv-03064

Judge James L. Graham

Magistrate Judge Kimberly A. Jolson

---

**ANSWER OF DEFENDANTS LOCAL CANTINA, LLC; LOCAL CANTINA DRAGON  
LLC; LOCAL CANTINA HOLDINGS, LLC; LOCAL CANTINA II, LLC; LOCAL  
CANTINA NEW ALBANY, LLC; LOCAL CANTINA PROPERTIES, LLC; LOCAL  
CANTINA TROLLEY, LLC; AND LOCAL CANTINA UNION CLUB, LLC TO THE  
FIRST AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT**

---

NOW COME, Defendants Local Cantina, LLC; Local Cantina Dragon LLC; Local Cantina Holdings, LLC; Local Cantina II, LLC; Local Cantina New Albany, LLC; Local Cantina Properties, LLC; Local Cantina Trolley, LLC; and Local Cantina Union Club, LLC (hereinafter, jointly, “Defendants”) and answer the allegations of Plaintiff’s Complaint as follows.

1. Defendants deny the allegations set forth in Paragraphs 1 through 4 of Plaintiff’s First Amended Complaint.

2. The allegations set forth in Paragraph 5 of Plaintiff’s First Amended Complaint do not require an answer by these Defendants. To the extent an answer is required, Defendants deny the allegations set forth in Paragraph 5 of Plaintiff’s First Amended Complaint.

3. The allegations set forth in Paragraphs 6, 7 and 8 of Plaintiff's First Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge sufficient to form a belief as to the truth of the allegations set forth therein, and therefore deny them.

4. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of Plaintiff's First Amended Complaint, and therefore deny them.

5. The allegations set forth in Paragraph 10 of Plaintiff's First Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 10 of Plaintiff's First Amended Complaint.

6. Defendants lack knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Plaintiff's First Amended Complaint, and therefore deny them.

7. The answering Defendants deny the allegations set forth in Paragraphs 12, 13, 14, 15, 16 and 17 of Plaintiff's First Amended Complaint, as they pertain to them.

8. Defendants admit the allegations set forth in Paragraph 18 of Plaintiff's First Amended Complaint, as they pertain to them.

9. Defendants deny the allegations set forth in Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of Plaintiff's First Amended Complaint, as they pertain to them.

10. Defendants deny the allegations set forth in Paragraph 33 of Plaintiff's First Amended Complaint.

11. Defendants admit the allegations set forth in Paragraph 34 of Plaintiff's First Amended Complaint.

12. Defendants deny the allegations set forth in Paragraph 35 of Plaintiff's First Amended Complaint.

13. Defendants deny the allegations set forth in Paragraph 36 of Plaintiff's First Amended Complaint.

14. Defendants deny the allegations set forth in Paragraph 37 of Plaintiff's First Amended Complaint.

15. The allegations set forth in Paragraph 38 of Plaintiff's First Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 38 of Plaintiff's First Amended Complaint.

16. Defendants deny the allegations set forth in Paragraphs 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51 of Plaintiff's First Amended Complaint.

17. Defendants admit the allegations set forth in Paragraph 52 of Plaintiff's First Amended Complaint.

18. Defendants deny the allegations set forth in Paragraphs 53, 54, 55, 56, 57, 58 and 59 of Plaintiff's First Amended Complaint.

19. Defendants deny the allegations set forth in Paragraph 60 of Plaintiff's First Amended Complaint, as they pertain to them.

20. Defendants deny the allegations set forth in Paragraphs 61, 62 and 63 of Plaintiff's First Amended Complaint.

21. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 64 of Plaintiff's First Amended Complaint, and therefore deny them.

22. Defendants deny the allegations set forth in Paragraphs 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 and 75 of Plaintiff's First Amended Complaint.

23. Defendants lack knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86 and 87 of Plaintiff's First Amended Complaint, and therefore deny them.

24. The allegations set forth in Paragraphs 88, 89 and 90 of Plaintiff's First Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraphs 88, 89 and 90 of Plaintiff's First Amended Complaint.

25. Defendants deny the allegations set forth in Paragraph 91 of Plaintiff's First Amended Complaint.

26. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 92, 93 and 94 of Plaintiff's First Amended Complaint, and therefore deny them.

27. Defendants deny the allegations set forth in Paragraph 95 of Plaintiff's First Amended Complaint.

28. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 96, 97, 98 and 99 of Plaintiff's First Amended Complaint, and therefore deny them.

29. The allegations set forth in Paragraphs 100, 101, 102, 103 and 104 of Plaintiff's First Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraphs 100, 101, 102, 103 and 104 of Plaintiff's First Amended Complaint.

30. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 105 and 106 of Plaintiff's First Amended Complaint, and therefore deny them.

31. Defendants deny the allegations set forth in Paragraphs 107, 108, 109, 110 and 111 of Plaintiff's First Amended Complaint.

32. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 112 and 113 of Plaintiff's First Amended Complaint, and therefore deny them.

33. The allegations set forth in Paragraphs 114, 115, 116 and 117 of Plaintiff's First Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraphs 114, 115, 116 and 117 of Plaintiff's First Amended Complaint.

34. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 118 of Plaintiff's First Amended Complaint, and therefore deny them.

35. In response to the allegations set forth in Paragraph 119 of Plaintiff's First Amended Complaint, Defendants repeat the statements, admissions and denials set forth above as if fully rewritten herein.

36. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 120 of Plaintiff's First Amended Complaint, and therefore deny them.

37. Defendants deny the allegations set forth in Paragraphs 121, 122, 123, 124 and 125 of Plaintiff's First Amended Complaint.

38. In response to the allegations set forth in Paragraph 126 of Plaintiff's First Amended Complaint, Defendants repeat the statements, admissions and denials set forth above as if fully rewritten herein.

39. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 127, 128 and 129 of Plaintiff's First Amended Complaint, and therefore deny them.

40. Defendants deny the allegations set forth in Paragraphs 130 and 131 of Plaintiff's First Amended Complaint.

41. In response to the allegations set forth in Paragraph 132 of Plaintiff's First Amended Complaint, Defendants repeat the statements, admissions and denials set forth above as if fully rewritten herein.

42. The allegations set forth in Paragraph 133 of Plaintiff's First Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 133 of Plaintiff's First Amended Complaint.

43. Defendants deny the allegations set forth in Paragraphs 134, 135 and 136 of Plaintiff's First Amended Complaint.

44. In response to the allegations set forth in Paragraph 137 of Plaintiff's First Amended Complaint, Defendants restate the statements, admissions and denials set forth above as if fully rewritten herein.

45. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 138 and 139 of Plaintiff's First Amended Complaint, and therefore deny them.

46. Defendants deny the allegations set forth in Paragraphs 140 and 141 of Plaintiff's First Amended Complaint.

47. In response to the allegations set forth in Paragraph 142 of Plaintiff's First Amended Complaint, Defendants restate the statements, admissions and denials set forth above as if fully rewritten herein.

48. The allegations set forth in Paragraphs 143 and 144 of Plaintiff's First Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 143 and 144 of Plaintiff's First Amended Complaint.

49. Defendants deny the allegations set forth in Paragraphs 145, 146 and 147 of Plaintiff's First Amended Complaint.

50. In response to the allegations set forth in Paragraph 148 of Plaintiff's First Amended Complaint, Defendants restate the statements, admissions and denials set forth above as if fully rewritten herein.

51. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 149 of Plaintiff's First Amended Complaint, and therefore deny them.

52. Defendants deny the allegations set forth in Paragraph 150 of Plaintiff's First Amended Complaint.

53. The allegations set forth in Paragraph 151 of Plaintiff's First Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 151 of Plaintiff's First Amended Complaint.

54. Defendants deny the allegations set forth in Paragraph 152 of Plaintiff's First Amended Complaint.

55. In response to the allegations set forth in Paragraph 153 of Plaintiff's First Amended Complaint, Defendants restate the statements, admissions and denials set forth above as if fully rewritten herein.

56. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 154 and 155 of Plaintiff's First Amended Complaint, and therefore deny them.

57. Defendants deny the allegations set forth in Paragraphs 156, 157, 158, 159, 160 and 161 of Plaintiff's First Amended Complaint.

58. In response to the allegations set forth in Paragraph 162 of Plaintiff's First Amended Complaint, Defendants restate the statements, admissions and denials set forth above as if fully rewritten herein.

59. The allegations set forth in Paragraph 163 of Plaintiff's First Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 163 of Plaintiff's First Amended Complaint.

60. Defendants deny the allegations set forth in Paragraphs 164, 165 and 166 of Plaintiff's First Amended Complaint.

61. In response to the allegations set forth in Paragraph 167 of Plaintiff's First Amended Complaint, Defendants restate the statements, admissions and denials set forth above as if fully rewritten herein.

62. The allegations set forth in Paragraphs 168 and 169 of Plaintiff's First Amended Complaint state legal conclusions to which no response is required. To the extent a response is



required, Defendants deny the allegations set forth in Paragraphs 168 and 169 of Plaintiff's First Amended Complaint.

63. Defendants deny the allegations set forth in Paragraphs 170, 171 and 172 of Plaintiff's First Amended Complaint

64. In response to the allegations set forth in Paragraph 173 of Plaintiff's First Amended Complaint, Defendants restate the statements, admissions and denials set forth above as if fully rewritten herein.

65. The allegations set forth in Paragraph 174 of Plaintiff's First Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 174 of Plaintiff's First Amended Complaint.

66. Defendants deny the allegations set forth in Paragraph 175 of Plaintiff's First Amended Complaint.

67. The allegations set forth in Paragraph 176 of Plaintiff's First Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 176 of Plaintiff's First Amended Complaint.

68. Defendants deny the allegations set forth in Paragraph 177 of Plaintiff's First Amended Complaint.

69. Defendants deny each and every allegation of Plaintiff's First Amended Complaint not specifically admitted herein to be true.

#### **FIRST AFFIRMATIVE DEFENSE**

Defendants acted at all times in good faith and in accordance with all applicable local, state, and federal laws, statutes, ordinances, regulations, and rules.

**SECOND AFFIRMATIVE DEFENSE**

The First Amended Complaint fails to state a claim upon which relief may be granted.

**THIRD AFFIRMATIVE DEFENSE**

One or more of Plaintiff's claims and/or allegations is barred by the applicable statute of limitations.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate her damages.

**FIFTH AFFIRMATIVE DEFENSE**

Compensatory damages, punitive damages, liquidated damages and/or attorneys' fees are not available for some or all of the causes asserted. At no time did Defendants act with willfulness, recklessness, intent, and/or malice.

**SIXTH AFFIRMATIVE DEFENSE**

An award of punitive damages in this action would be unconstitutional.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff has no right to a jury trial on some or all of her claims.

**EIGHTH AFFIRMATIVE DEFENSE**

One or more of Plaintiff's claims are barred by waiver, estoppel, laches and/or unclean hands.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged damages are speculative and thus unavailable as a matter of law.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff failed to exhaust her administrative remedies.

**ELEVENTH AFFIRMATIVE DEFENSE**

An award of front pay would be inequitable.

**TWELFTH AFFIRMATIVE DEFENSE**

Defendants reserve the right to assert additional defenses.

WHEREFORE, Defendants request that Plaintiff's First Amended Complaint against them be dismissed, and may recover their costs and attorney fees and all other such relief as the Court deems appropriate.

Respectfully submitted,

/s/ Jan E. Hensel

Jan E. Hensel (0040785)  
Charles E. Ticknor, III (0042559)  
DINSMORE & SHOHL LLP  
191 W. Nationwide Boulevard, Suite 300  
Columbus, OH 43215  
Telephone: (614) 227-4267  
Facsimile: (614) 221-8590  
E-mail: [jan.hensel@dinsmore.com](mailto:jan.hensel@dinsmore.com)  
[charles.ticknor@dinsmore.com](mailto:charles.ticknor@dinsmore.com)

and

Zachary J. Weber (0097997)  
DINSMORE & SHOHL LLP  
255 E. Fifth Street  
Cincinnati, OH 45202  
Telephone: (513) 832-5348  
E-mail: [zachary.weber@dinsmore.com](mailto:zachary.weber@dinsmore.com)

*Counsel for Defendants*

**Certificate of Service**

The undersigned hereby certifies that a true and accurate copy the foregoing *Answer of Defendants Local Cantina, LLC; Local Cantina Dragon LLC; Local Cantina Holdings, LLC; Local Cantina II, LLC; Local Cantina New Albany, LLC; Local Cantina Properties, LLC; Local Cantina Trolley, LLC; and Local Cantina Union Club, LLC to Plaintiff's First Amended Class and Collective Action Complaint* was electronically filed with the Court this 13<sup>th</sup> day of August, 2020, via the Court's ECF system, which will send electronic notification of the filing to the following:

Andrew R. Biller  
Biller & Kimble, LLC  
4200 Regent Street, Suite 200  
Columbus, OH 43219  
*abiller@billerkimble.com*

Andrew P. Kimble  
Philip J. Krzeski  
Biller & Kimble, LLC  
8044 Montgomery Road, Suite 515  
Cincinnati, OH 45236  
*akimble@billerkimble.com*  
*pkrzeski@billerkimble.com*

*Counsel for Plaintiff*

/s/ Jan E. Hensel

Jan E. Hensel (0040785)